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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,)
11 Plaintiff,)
12 v.)
13 GB ENTERPRISES, INC., and)
14 ALPHA TECHNOLOGIES, INC,)
15 Defendants.)

NO. CR04-172C
CR04-173C

GOVERNMENT'S SENTENCING
MEMORANDUM

16 The United States of America, by and through John McKay, United States
17 Attorney for the Western District of Washington, and Robert Westinghouse and Susan
18 Loitz, Assistant United States Attorneys for said District, hereby submits this Sentencing
19 Memorandum in the above-entitled case.

20 Alpha Technologies, Inc. ("ATI") and G.B. Enterprises, Inc. ("GBE") are
21 separate legal entities with intertwined businesses interests, a number of shared
22 employees, and leaders – Fred Kaiser and Grace Borsari – so close as to be co-signers
23 on joint bank accounts. The two corporate leaders have also been long-standing partners
24 in a single-minded desire to avoid the payment of almost all taxes including federal
25 income taxes. This obsession has led them year after year to systematically shift income
26 from business to business within the Alpha corporate empire to avoid having such
27 income stuck on the corporate books where it might be noticed by the Internal Revenue
28 Service.

1 The corporate felony tax fraud convictions that are subject of these plea
2 agreements focus on their specific efforts to reduce their corporate tax liability by
3 artificially inflating business expenses through the purported payment of commissions or
4 fees to a related Canadian Alpha entity, Alpha Technologies, Ltd. ("ATL"). This
5 scheme, which has been accurately detailed in the presentence report, involved the
6 movement of money offshore to either the Grand Caymans or to Cyprus, two noted tax-
7 havens, in the form of residual commissions left over after ATI, the service entity, paid
8 the regional sales representatives their commissions for the marketing of uninterruptible
9 power sources and related items manufactured by GBE. Over an approximate ten year
10 period, GBE escaped paying more that \$19 Million in taxes on diverted income of more
11 than \$51 million.

12 If the case was ever tried, the corporations, through their leaders, Mr. Kaiser and
13 Ms. Borsari, would undoubtedly claim that these offshore payments were actually
14 appropriate payments to Mr. Kaiser for services provided or work performed. The
15 record belies this claim. First, during the prolonged civil examination and more
16 recently during the extended criminal investigation, no one rushed forward to
17 acknowledge that such payments were even being made. Indeed, the party line has been
18 that the residual commissions were paid to the Canadian affiliate, ATL, pursuant to a
19 1980 agreement that provided for the payments to ATL to maintain a regional sales
20 network. Furthermore, those willing to carry the corporate bags for Mr. Kaiser,
21 particularly a former Chief Financial Officer who is particularly loyal to Mr. Kaiser,
22 claimed that the funds shipped off to ATL were duly reported to the Canadian
23 Department of Revenue.

24 The story began to unravel only when the skeptical IRS examiner, who refused to
25 accept what he was being told, uncovered evidence of wire transfers to offshore entities.
26 However, even when confronted with the first evidence of checks written to Alphatec,
27 Ltd, another Fred Kaiser controlled Alpha entity in Cyprus, this loyalist feigned
28 ignorance about even the existence of an entity called Alphatec. Later in the

1 investigation, additional corporate agreements – heretofore unmentioned -- were
2 produced. One of these agreements was presented by the Alpha businesses as providing
3 a logical basis for the offshore transfers, this time as some sort of royalty payments
4 owed for intellectual property. Additionally, Mr. Kaiser sought to impede and obstruct
5 the investigation urging one witness, a possible suitor interesting in buying ATI, GBE,
6 and other Alpha businesses, to resist a grand jury subpoena for records.

7 In the face of such strong evidence of criminal tax fraud and obstructionist
8 behavior, the obvious question is whether justice is served by the corporate plans and
9 specific sentences contemplated in the Plea Agreements. Our answer is an unequivocal,
10 “Yes!”

11 The corporate pleas are a compromise. There is no doubt that strong arguments
12 can be made that a number of individuals, most notably Fred Kaiser, might be
13 prosecuted. For more than twenty years, he has taken advantage of the American
14 business environment to build a very profitable business while almost entirely avoiding
15 the payment of taxes.

16 Unfortunately, it would be of little consequence to charge him with tax violations
17 or with conspiracy to obstruct justice because he appears to live in Cyprus and in the
18 Bahamas, two countries from which extradition is most unlikely. Information provided
19 to federal law enforcement agents suggests that he has not been in this country in almost
20 a year. One suspects that he intends to remain outside the jurisdiction indefinitely if
21 charges are forthcoming.

22 Prosecution of others implicated in the investigation is unattractive for either of
23 two reasons. First, their culpability pales in comparison to that of the ultimate boss.
24 Second, the absence of Mr. Kaiser from their trial would allow them to shift all of the
25 blame to him and claim that they were only relying on his directions.

26 Finally, prosecution of any of these individuals would almost certainly encounter
27 a stiff defense premised on the argument that they relied on the advice of counsel and
28 that the residual commissions genuinely constituted ordinary and necessary business

1 expenses for GBE. In fact, the investigation made clear that numerous legal and
2 accounting professionals did advise the businesses from time to time, although it is far
3 from clear that any of them received truthful information on which to base their advice.
4 Moreover, counsel for Mr. Kaiser has repeatedly contended that Mr. Kaiser is an
5 integral part of the Alpha sales force and is fairly entitled to compensation for his
6 services.

7 Balanced against this set of possible individual criminal prosecutions and the
8 inherent factual challenges, is a settlement that extracts much from the two corporations.
9 It includes corporate felony pleas, statutory maximum fines without the complications of
10 the alternative fine provision, and a dollar for dollar repayment of back taxes, plus
11 interest and penalties, which have the effect of almost doubling the total bill. In the end,
12 the tax base of this country is increased by \$35.5 million.

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1 Under all of the circumstances, the Internal Revenue Service and the United
2 States Department of Justice think this is a good deal. We respectfully urge the Court to
3 accept it.

4 Dated this 18th day of June, 2004.

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6 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2004, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the defendants. I hereby certify that I have served the attorneys of record for the defendants that are non CM/ECF participants via telefax.

s/Anna Chang
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